

**INTERNATIONAL TRADEMARK ASSOCIATION COMMENTS ON THE U.S. PATENT AND
TRADEMARK OFFICE - TRADEMARK TRIAL AND APPEAL BOARD'S FINAL PRETRIAL
CONFERENCE PILOT PROGRAM**

NOVEMBER 30, 2022

The International Trademark Association (INTA) would like to thank Chief Judge Rogers for the opportunity to provide comments on the Final Pretrial Conference Pilot Program. The following comments were prepared by INTA's Trademark Office Practices Committee: USPTO Subcommittee and staff.

We hope you will find these comments helpful in the context of the Trademark Trial and Appeal Board's (TTAB) proposed pilot program and we welcome the opportunity to further engage in discussions on the topic.

The International Trademark Association is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property (IP) to foster consumer trust, economic growth, and innovation, and committed to building a better society through brands. Members include nearly 6,500 organizations, representing more than 34,350 individuals (trademark owners, professionals, and academics) from 185 countries, who benefit from the Association's global trademark resources, policy development, education and training, and international network. Founded in 1878, INTA, a not-for-profit organization, is headquartered in New York City, with offices in Beijing, Brussels, Santiago, Singapore, and Washington, D.C., and a representative in New Delhi. For more information, visit inta.org.

The TTAB will commence a pilot program to assess the value of Final Pretrial Conferences in certain cases "identified as likely to generate unnecessarily large or disorganized and unwieldy records, or which the TTAB otherwise determines, based on the circumstances of individual cases, to be appropriate for inclusion in the pilot program." In this Final Pretrial Conference, the parties would be required to provide information above and beyond what is currently required by the Board for pretrial disclosures. According to the Board, its "intent, on a case-by-case basis, [is] to help the parties focus their claims/defenses/objections; and winnow down the breadth of trial through stipulations and agreed-upon facts, to the extent reasonably possible."

INTA applauds the Board for engaging in this endeavor and agrees with the goals of the pilot to streamline cases, in general, but in particular those with complicated and/or onerous and unwieldy records. Indeed, the use of Final Pretrial Conferences (FPC) may lead to worthwhile discussions between the parties to address issues that would otherwise slow the process and cause unnecessary drain on already limited resources at the TTAB.

The Board has defined the scope of the draft pretrial order to "include a trial plan and pretrial disclosures of all evidence to be introduced – including anticipated witnesses and planned exhibits. The draft order would also include any proposed amendments to claims and defenses and any objections to evidence (particularly for documentary evidence). Parties would be encouraged to focus evidentiary objections on those that are likely to prevail and likely to affect the outcome of the case. Parties would be strongly discouraged from asserting a litany of evidentiary objections (appropriate stipulations should obviate many such objections). While the TTAB would

encourage parties to stipulate where possible, the ATJ would decide whether to rule on objections before or during trial.”

While the precise details of the pilot program, at this early stage, are somewhat scant, INTA strongly agrees that the requirements set forth in the Final Pretrial Conference Order template could greatly reduce the expense and time associated with trials in Board proceedings, a worthy endeavor that will certainly benefit both the TTAB and litigants.

INTA is also cognizant of possible negative impacts that a mandated Final Pretrial Conference could have on the cost of proceedings for litigants given the increase in workload for the parties to complete the requirements of the FPC Order. To that end, INTA would propose that it continue to study the efficacy of the pilot program and the potential unintended negative impacts that may arise for parties and provide further analysis to the Board at the completion of the pilot program.

INTA would be pleased to answer any questions that Chief Judge Rogers may have and is available to discuss our comments and recommendations in more detail. Please contact Jenny Simmons (jsimmons@inta.org).

Thank you in advance for considering the views of INTA.

Sincerely yours,



Etienne Sanz de Acedo
Chief Executive Officer
International Trademark Association